

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

Jean Canatsey Fowler, in
individual and representative
capacity as trustee of the Canatsey
Family Trust;
David Joseph Curry, in his
individual and representative
capacity as trustee of the Curry Trust
DBA Chalkboard Deli;
Deborah Kay Curry, in her
individual and representative
capacity as trustee of the Curry Trust
DBA Chalkboard Deli;
William D. Logan DBA
Chalkboard Deli; and Does 1-10,

Defendants.

Case No. '14CV2058 GPC NLS

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence**

Plaintiff Chris Langer complains of Defendants Jean Canatsey Fowler,
in individual and representative capacity as trustee of the Canatsey Family
Trust; David Joseph Curry, in his individual and representative capacity as
trustee of the Curry Trust DBA Chalkboard Deli; Deborah Kay Curry, in her

1 individual and representative capacity as trustee of the Curry Trust DBA
2 Chalkboard Deli; William D. Logan DBA Chalkboard Deli; and Does 1-10
3 (“Defendants”) and alleges as follows:
4

5 **PARTIES:**

6 1. Plaintiff is a California resident with physical disabilities. He is a
7 paraplegic who cannot walk and who uses a wheelchair for mobility. He has
8 a specially equipped van with a ramp that deploys out of the passenger side
9 of his van and he has a Disabled Person Parking Placard issued to him by the
10 State of California.

11 2. Defendants are, or were at the time of the incidents, the real property
12 owners, business operators, lessors and/or lessees for the Chalkboard Deli
13 (“Deli”) located at or about 1146 Garnet Avenue, San Diego, California.

14 3. Plaintiff does not know the true names of Defendants, their business
15 capacities, their ownership connection to the property and business, or their
16 relative responsibilities in causing the access violations herein complained
17 of, and alleges a joint venture and common enterprise by all such
18 Defendants. Plaintiff is informed and believes that each of the Defendants
19 herein, including Does 1 through 10, inclusive, is responsible in some
20 capacity for the events herein alleged, or is a necessary party for obtaining
21 appropriate relief. Plaintiff will seek leave to amend when the true names,
22 capacities, connections, and responsibilities of the Defendants and Does 1
23 through 10, inclusive, are ascertained.
24

25 **JURISDICTION & VENUE:**

26 4. This Court has subject matter jurisdiction over this action pursuant to
27 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
28 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1 5. Pursuant to pendant jurisdiction, an attendant and related cause of
2 action, arising from the same nucleus of operative facts and arising out of
3 the same transactions, is also brought under California's Unruh Civil Rights
4 Act, and the California Disabled Persons Act, which acts expressly
5 incorporate the Americans with Disabilities Act.

6 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
7 founded on the fact that the real property which is the subject of this action
8 is located in this district and that Plaintiff's cause of action arose in this
9 district.

10
11 **FACTUAL ALLEGATIONS:**

12 7. The Plaintiff went to the Deli in April of 2014, to eat.

13 8. The Deli is a facility open to the public, a place of public
14 accommodation, and a business establishment.

15 9. Paths of travel are one of the facilities, privileges and advantages
16 offered by defendants to their customers at the Deli.

17 10. Unfortunately, the path of travel leading to the Deli entrance requires
18 a person to navigate a flight of steps for which there is no ramp.

19 11. The plaintiff personally encountered this problem. This inaccessible
20 condition denied the plaintiff full and equal access and caused him difficulty
21 and frustration.

22 12. Plaintiff would like to return and patronize the Deli but will be
23 deterred from visiting until the defendants cure the violation.

24 13. The defendants have failed to maintain in working and useable
25 condition those features required to provide ready access to persons with
26 disabilities.

27 14. Given the obvious and blatant violations, the plaintiff alleges, on
28 information and belief, that there are other violations and barriers on the site

1 that relate to his disability. Plaintiff will amend the complaint, to provide
2 proper notice regarding the scope of this lawsuit, once he conducts a site
3 inspection. However, please be on notice that the plaintiff seeks to have all
4 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
5 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
6 he can sue to have all barriers that relate to his disability removed regardless
7 of whether he personally encountered them).

8 15. Additionally, on information and belief, the plaintiff alleges that the
9 failure to remove these barriers was intentional because: (1) these particular
10 barriers are intuitive and obvious; (2) the defendants exercised control and
11 dominion over the conditions at this location and, therefore, the lack of
12 accessible facilities was not an “accident” because had the defendants
13 intended any other configuration, they had the means and ability to make the
14 change.

15
16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
17 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against
18 all defendants (42 U.S.C. section 12101, et seq.)

19 16. Plaintiff repleads and incorporates by reference, as if fully set forth
20 again herein, the allegations contained in all prior paragraphs of this
21 complaint.

22 17. Under the ADA, it is an act of discrimination to fail to ensure that the
23 privileges, advantages, accommodations, facilities, goods and services of
24 any place of public accommodation is offered on a full and equal basis by
25 anyone who owns, leases, or operates a place of public accommodation. See
26 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 27 a. A failure to make reasonable modifications in policies, practices,
28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or
2 accommodations to individuals with disabilities, unless the
3 accommodation would work a fundamental alteration of those
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
7 defined by reference to the ADAAG, found at 28 C.F.R., Part
8 36, Appendix “D.”

9 c. A failure to make alterations in such a manner that, to the
10 maximum extent feasible, the altered portions of the facility are
11 readily accessible to and usable by individuals with disabilities,
12 including individuals who use wheelchairs or to ensure that, to
13 the maximum extent feasible, the path of travel to the altered
14 area and the bathrooms, telephones, and drinking fountains
15 serving the altered area, are readily accessible to and usable by
16 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

17 18. There must be an accessible path of travel that connects all buildings,
18 elements and spaces on the same site. 1991 Standards § 4.3.2. To be
19 considered an accessible route, there cannot be a stair or step. 1991
20 Standards § 4.3.8. Any such change in level measuring greater than ½ inch
21 must have a ramp or lift. *Id.* 2010 Standards § 303.4.

22 19. Here, the unramped steps are a violation of the ADA.

23 20. A public accommodation must maintain in operable working
24 condition those features of its facilities and equipment that are required to be
25 readily accessible to and usable by persons with disabilities. 28 C.F.R. §
26 36.211(a).

27 21. Here, the failure to ensure that the accessible parking was available
28 and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**
2 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)
3 (Cal Civ § 51-53)

4 22. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 23. Because the defendants violated the plaintiffs' rights under the ADA,
8 they also violated the Unruh Civil Rights Act and are liable for damages.
9 (Civ. Code § 51(f), 52(a).)

10 24. Because the violation of the Unruh Civil Rights Act resulted in
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
13 55.56(a)-(c).)

14
15 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**
16 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and
17 against all defendants) (Cal Civ. § 54-54.8)

18 25. Plaintiff repleads and incorporates by reference, as if fully set forth
19 again herein, the allegations contained in all prior paragraphs of this
20 complaint.

21 26. Because the defendants violated the plaintiff's rights under the ADA,
22 they also violated the Disabled Persons Act and are liable for damages. (Civ.
23 Code § 54.1(d), 54.3(a).)

24 27. Because the violation of the Disabled Persons Act resulted in
25 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
26 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
27 55.56(a)-(c).)

1 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of
2 plaintiff and against all defendants)

3 28. Plaintiff repleads and incorporates by reference, as if fully set forth
4 again herein, the allegations contained in all prior paragraphs of this
5 complaint.

6 29. The Defendants had a general duty and a duty arising under the
7 Americans with Disabilities Act and the Unruh Civil Rights Act and
8 California Disabled Persons Act to provide safe, convenient, and accessible
9 facilities to the plaintiffs. Their breach of this duty, as alleged in the
10 preceding paragraphs, has caused injury and damage as alleged above.

11
12 **PRAYER:**

13 Wherefore, Plaintiff prays that this court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 Plaintiffs are not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act and/or the California
20 Disabled Persons Act which damages provide for actual damages and a
21 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
22 acts, simultaneously, and an election will be made prior to or at trial.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

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4 Dated: August 5, 2014

CENTER FOR DISABILITY ACCESS

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6 By: 

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8 Mark Potter, Esq.
9 Attorneys for Plaintiff
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